WEST VIRGINIA CODE: §11-13C-8A

§11-13C-8a. Recapture of credit; recapture tax imposed.

(a) When recapture tax applies. --

(1) Any person who places business investment and jobs expansion tax credit property in service or use after March 12, 1994, and who fails to use such qualified investment property for at least the period of its useful life (determined as of the time the property was placed in service or use), or the period of time over which tax credits allowed under this article with respect to such property are applied under this article, which ever period is less, and who reduces the number of its employees filling new jobs in its business in this state, which were created and are directly attributable to the qualified investment property, after the third taxable year in which the qualified investment property was placed in service or use, or fails to continue to employ individuals in all the new jobs created as a direct result of the qualified investment property and used to qualify for the credit allowed by this article, prior to the end of the tenth taxable year after the qualified investment property was placed in service or use, such person shall pay the recapture tax imposed by subsection (b) of this section.

(2) This section shall not apply when section nine of this article applies. However, the successor, or the successors, and the person, or persons, who previously claimed credit under this article with respect to such qualified investment property and the new jobs attributable thereto, shall be jointly and severally liable for payment of any recapture tax subsequently imposed under this section with respect to such qualified investment property and new jobs.

(b) Recapture tax imposed. --

The recapture tax imposed by this subsection shall be the amount determined as follows:

(1) Full recapture. -- If taxpayer prematurely removes qualified investment property placed in service after March 12, 1994, (when considered as a class) from economic service in such taxpayer's qualified investment business activity in this state, and the number of employees filling the new jobs created by such person falls below fifty, taxpayer shall recapture the amount of credit claimed under section five of this article for the taxable year, and all preceding taxable years, on qualified investment property which has been prematurely removed from service. The amount of tax due under this subdivision of subsection (b) shall be an amount equal to the amount of credit that is recaptured under this subdivision (1).

(2) Partial recapture. -- If taxpayer prematurely removes qualified investment property placed in service after March 12, 1994, (when considered as a class) from economic service in such taxpayer's qualified investment business activity in this state, and the number of employees filling the new jobs created by such person remains fifty or more, but falls below

WV Legislature

the number necessary to sustain continued application of credit determined by use of the new job percentage upon which such taxpayer's one-tenth annual credit allowance was determined under section four, or seven-a of this article, taxpayer shall recapture an amount of credit equal to the difference between (A) the amount of credit claimed under section five of this article for the taxable year, and all preceding taxable years, and (B) the amount of credit that would have been claimed in such years if the amount of credit allowable under section four, or seven-a of this article had been determined based on the qualified investment property which remains in service using the average number of new jobs filled by employees in the taxable year for which recapture occurs. The amount of tax due under this subdivision of subsection (b) shall be an amount equal to the amount of credit that is recaptured under this subdivision (2).

(3) Additional recapture. -- If after a partial recapture under subdivision (2) of this subsection, such taxpayer further reduces the number of employees filling new jobs below fifty, taxpayer shall recapture an additional amount determined as provided under subdivision (1) of this subsection. The amount of tax due under this subdivision of subsection (b) shall be an amount equal to the amount of credit that is recaptured under this subdivision (3).

(c) Recapture of credit allowed for projects. -- The Tax Commissioner shall file in the West Virginia register by July 1, 1994, an emergency legislative regulation explaining how the rules of this section shall be applied in the case of projects certified under section four-b of this article.

(d) Payment of recapture tax. -- The amount of tax recaptured under this section shall be due and payable on the day such person's annual return is due for the taxable year in which this section applies, under article twenty-one, or twenty-four, of this chapter. When the employer is a partnership, or s corporation, for federal income tax purposes, the recapture tax shall be paid by those persons who are partners in such partnership, or shareholders in such s corporation, in the taxable year in which recapture occurs under this section.

(e) Regulations. -- The Tax Commissioner shall promulgate such legislative regulations as may be necessary to carry out the purpose of this section and to implement the intent of the Legislature. Such regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

WV Legislature